IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7516 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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HASMUKHBHAI JINABHAI PATEL

Versus

PRESIDENT VADNAGAR NAGARPALIKA

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Appearance:

1. Special Civil Application No. 7516 of 1999

MR AM PAREKH for Petitioner No. 1

RULE SERVED for Respondent No. 1-2

MR PRADIP BHATE A.G.P. for Respondent No. 3

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CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 29/07/2004

ORAL JUDGEMENT

When the matter was called out in the third round Mr. Parekh was not present. Hence, the matter is

decided in his absence.

2.0. The petitioner by way of this petition has prayed that respondents be directed to give the benefits of regularisation and fixation of salary to the post of Tractor Conductor w.e.f 1st June, ,1991 and also to pay intertest at the rate of 18% for the difference of salary and allowances w.e.f 1st June, ,1991 till the actual date of payment.

2.0. The short facts of the case are that the petitioner was appointed on daily wage basis as Tractor Conductor w.e.f 1st April, 1991 on a permanent post. The grievance of the petitioner is that though he is working on a permanent post, he is not being regularized or paid salary and allowances for the post of Tractor Conductor. He, therefore made representations to the respondents, to regularize his service and fixed the salary to the said post. The respondents did not reply to his representation. Hence, this petition.

3.0. Mr. Bhate learned advocate for the respondents has relied upon the decisions of the Division Bench of this Court in the case of Halvad Nagarpalika & Ors. v, Jani Dipakbhai Chandravadanbhai reported in {2003) 2 G.H.J. p.397, wherein it has been held that, in view of the judgment of Hon'ble Supreme Court, provisions of Section 25-F cannot be invoked in the case of daily wage employees whose appointments are without following the due procedure laid down in statutory rules of recruitment policies and, therefore, the order passed by the High Court is required to be quashed and set aside.

The Division Bench has further held as under:-

"12. Mr. Vyas has further relied on the decision of the Hon'ble Supreme Court in the case of HIMANSHU Vs. STATE OF BIHAR & ORS. - (1997) 1 S.C.C. p. 591, wherein the main grievance of the petitioners was that termination of the services was in violation of Section 25-F of the Industrial Disputes Act, 1947. The Hon'ble Supreme Court has observed that the persons, whose services were terminated, were not appointed to the posts in accordance with the rules but were engaged on the basis of need of work. They were temporary employees working on daily wages and in those circumstances, their disengagement from

service could not be construed to be a retrenchment under the Industrial Disputes Act. It was further hold by the Hon'ble Supreme Court that the concept of retrenchment therefore, cannot be stretched to such an extent as to cover the said employees. While negativing the contention of the petitioners in that case that the termination of their services was arbitrary, the Hon'ble Supreme Court has hold that they were only daily wage employees and had no right to the posts and hence their disengagement was not arbitrary."

2.7. Mr. Bhate has also relied on the Full Bench decision of this Court rendered in the case of Amreli Municipality v. Gujarat Pradesh Municipal Employees Union delivered in Special Civil Application No. 5746 of 1999 and its allied matters dated 9th July, 2004, wherein it has been observed as under :-

"Even if it is held that the Labour Court/ Industrial Tribunal has wide jurisdiction to alter service conditions, it can exercise such powers subject to the recruitment rules, availability of sanctioned posts and subject to the grant and limits of budgetary provisions. When there is no permanent post, no direction can be given to the authorities to absorb daily wage employees by creating new posts. It is the common phenomenon in the case of Nagarpalikas / Municipalities / Government Corporations where such appointments are made on political considerations. The parties in power may recruit their own persons as daily rated employees and thereafter by seeking orders from the Court, they want to absorb such employees on permanent establishment. Time and again, such practice is depricated in so many words in the judgment referred by us. The Panchayats, Municipalities, Municipal Corporation or Government Corporations as well as Government establishments are facing severe financial crisis only because of such staff which may be required for the time being, but to make them permanent would definitely adversely affect the financial substratum of respective organizations and the Courts should not be party to such illegal and irregular appointments by allowing them to be continued at the cost of public exchequer. We are conscious

of the fact that by not approving the appointments of such daily wagers, it will be very difficult for them to survive and the question of their livelihood would arise. Keeping this aspect in mind, We do feel that in appropriate cases, their interests are required to be protected. We accordingly give following guidelines:-

(1) If casual workers or daily rated workers are not required by the Local bodies and whose services are likely to be terminated, they should be relieved on the principle of "last come, first go". In the event of filling up the posts in future, those who are eligible and qualified from and amongst the relieved workmen shall be preferred by waiving the age limit.

(2) If the workman who have continued for years as temporary employee, in the event of their termination, the authorities will see that no unqualified person is appointed in their place.

(3) The question of regularization can also be considered by the authorities before terminating services provided the workers are eligible on the sanctioned posts.

(4) If the posts are not sanctioned, the authorities may take such steps which are necessary in accordance with the provisions of law/ rules / circulars within the budgetary provisions."

3.4 I have carefully gone through the record of this petition. However, looking to the peculiar facts and circumstances of the case and in view of the decisions referred hereinabove, this Court under Article 226 of the Consitution of India cannot grant such reliefs which are claimed in this petition. Hence, it is dismised. Rule is discharged with no order as to costs.

[K.S. JHAVERI, J.]

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